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ARTICLES

CAUSATION IN SECURITIES LITIGATION

Gerard Craddock SC

Filings of shareholder class actions has grown steadily, but none has yet gone to judgment. The element of causation has engendered controversy. The plaintiffs eye jealously the fraud on the market theory accepted in the United States as permitting a presumption of reliance in efficient markets. Many Australian litigants could have sued in the United States, until that avenue was closed by *Morrison v National Australia Bank Ltd* 130 SC 2869 (2010). Congress may yet open the door a little by amendment to the Dodd-Frank Act. *Ingot Capital Investments v Macquarie Equity Capital Markets* (2009)

73 NSWLR 653 provides a non-binding, yet highly persuasive rebuttal of the plaintiff thesis that some form of market-based causation may be grafted onto statutory causes of action under the Corporations Act 2001 (Cth). The question whether the legislature should act to ease the legal and procedural burdens of providing the causal link between contraventions and shareholder losses requires input from businesses, regulators, economists and physicists, at least. Recent developments in high frequency trading and dark pools have thrown up conundrums that suggest that we do not understand the way financial markets work in the computer age. Better understanding is required in order to make sound policy choices as to interests that ought to be protected by enabling damages suits for investment losses. 813

PROTECTING THE WORKS OF INDIGENOUS ARTISTS UNDER COPYRIGHT LAW AND AT ITS BORDERS

Mary Wyburn

When copyright law has been used to protect indigenous creative works, the protection provided has not by any means amounted to full recognition of the particular features of indigenous ownership, such as the rights of the indigenous group and the special types of cultural harm suffered when such works are used without appropriate authority. In response to this gap in protection, some have proposed the introduction of more direct legislative measures but so far government has been reluctant to act. This article explores earlier instances where copyright protection has been available and examines two recent developments occurring at the outer edges of copyright law, the introduction of a resale royalty right and a voluntary code of conduct for dealers in the indigenous art industry. Its focus is on the way copyright law is able to craft protection, however imperfectly, that takes account of some of the special features of indigenous creative works. It leaves for others the separate question of whether more direct legislative protection is the appropriate response in this area. 829

BORROWED MANNERS: COURT ETIQUETTE AND THE MODERN LAWYER

Thomas F Gaffney

This article examines the origins of court etiquette in the English courts of the 13th century through the writings of early legal commentators. It explores the development of court etiquette in England and Australia until the present day. It analyses the nature and purposes of court etiquette in early and modern courts, and discusses the conventions of court etiquette that should be observed by the modern-day practitioner in Australia. 842

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